



February 9, 2017

Marlene Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington DC 20554

Re: Notice of *Ex Parte* Presentation, CG Docket No. 02-278

Dear Ms. Dortch:

This *Ex Parte* Notice relates to two meetings that occurred on February 7, 2017 regarding pending matters. The first was between myself, George Slover of Consumers Union, and the following FCC Consumer and Governmental Affairs Bureau staff: Kurt Schroeder, Mark Stone, John B. Adams, Kristi Thornton, Micah Caldwell and Alison Kutler. The second meeting included myself, my colleague from the National Consumer Law Center – Olivia Wein, George Slover and Jonathan Schwantes of Consumers Union, and Nick Degani and Zenji Nakazawa of Chairman Pai's Office.

During these meetings we discussed the following topics:

1. **Opposition to Reconsideration of Budget Regulations.** The Opposition to the student loan servicers' Petition for Reconsideration to the Budget Rules filed by the National Consumer Law Center on behalf of its low-income clients and the seventeen national and state advocacy organizations.¹ We explained that the Budget Rules are fully consistent with the Commission's authority. In particular, we pointed out that --
 - a. As the Telephone Consumer Protection Act (TCPA) is a consumer protection statute, the Commission was tasked with balancing the necessary protections for consumers from abusive robocalls with allowing some unconsented-to calls to collect debt owed the federal government, and the Budget Rules illustrates a perfect equilibrium between the competing goals of the amended Act.
 - b. The Budget Rules' limitation of three robocall calls per month falls squarely within the Commission's discretionary authority provided by Congress in 47 U.S.C. §

¹Opposition to Petition for Reconsideration Submitted by Great Lakes Higher Educ. Corp. et al. by

227(b)(2)(H) to “limit the number ... of calls.” In setting this number, the Commission recognized both the harassment that consumers suffer from debt collectors, and the particular annoyance and invasion of privacy caused by autodialed calls.

- c. In addition to explicitly authorizing the Commission to limit the number of calls, Congress provided the Commission with the broader mandate in § 301(b) of the Budget Act to issue regulations implementing the change in the statute. In order for the mandate in § 301(b) to have meaning (as statutory construction requires), it must provide some additional regulatory authority to the Commission beyond the ability to limit the number of calls; otherwise, the statute would not need implementing by regulations; the statutory directive would be self-executing.
- d. Some of the protections in the rules, such as a) requiring that call attempts be counted even when not answered; b) prohibiting calls to parties other than the debtor; and c) allowing only one wrong number call to reassigned numbers, all fall squarely within a fair reading of the Commission’s statutory authorization under the Budget Act to limit the number of calls.
- e. The regulatory authority provided the Commission in § 301(b), as well as the overarching consumer protection purposes of the TCPA, support the consumer protections in the rules that go beyond the limits on the number of calls, such as a) requiring that callers provide notice of a right to stop the calls, and abide those requests; c) restrict the times during which the calls can be made;
- f. The entire point of limiting robocalls is to address the annoyance and invasion of privacy they cause. The ringing telephone triggers the TCPA’s purpose of protecting consumers from that annoyance and invasion of privacy, not just when the consumer chooses to answer the phone. The Budget Rule’s application of the call limit to live contacts rather than only to attempts is also fully consistent with the longstanding interpretation of TCPA protections to measure that annoyance not only in terms of when the consumer has actually answered the phone.
- g. The Commission has properly determined that the words “solely to collect a debt” in the amendment to the TCPA authorizing these calls, only permits collectors to make unconsented-to calls to the debtor, not to anyone else. The collectors’ wishes to be able to call every “endorser, relative, reference, and entity” in the consumer’s file do not meet the statutory requirement of calls “solely to collect the debt.”
- h. The application of the rule on reassigned numbers from the 2015 Omnibus Order² to these unconsented-to calls is essential to protect consumers from robocalls once they have a telephone number reassigned from someone else.

2. **Broadnet.** We reiterated that if the Budget Rules are reconsidered then the Broadnet Ruling should also be reconsidered,³ as the two issues are inextricably linked.

² In the Matter of Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991, CG Docket No. 02-278, Report and Order, 30 FCC Rcd. 7961, 8006-8011 ¶¶ 85-93 (2015).

³ NCLC’s Petition for Reconsideration of the Broadnet Declaratory Ruling and Request for Stay Pending Reconsideration, CG Docket No. 02-278 (filed July 26, 2016) is available at <https://ecfsapi.fcc.gov/file/10726059270343/NCLC%20Petition%20for%20Reconsideration%20of%20Broadnet.pdf>. NCLC’s Comments in Support of Reconsideration in furtherance of the Petition

3. **Health Care Calls.** We have ongoing concerns with the requests by the health care industry for an exemption for health care calls. We pointed out, again, that the petitions filed by the industry conflated the concept of consent with the subject of the calls for which the consent was provided. We reiterated the Commission's standard, as restated in the recent Blackboard and Edison declaratory ruling,⁴ that the content of the telephone call has to be "closely related" to the transaction which gave rise to the consumer's provision of a cell phone number.⁵ And we also pointed out that the requests seemed to go well beyond a request for clarifying that the HIPAA provision applies to managed care plans and how they receive telephone numbers. And, to clarify this point, Consumers Union's comments include revisions to Anthem's proposed changes, which achieve the stated intent without broadening the exemption beyond that intent.
4. **ABA's Request for Reconsideration.**⁶ The ABA's petition for reconsideration of the 2015 Omnibus Order regarding the requirement that free to end user calls to customers can only be made to phone numbers provided by the customer to the bank.
5. **Robocall Strike Force.**⁷ We asked whether Chairman Pai would continue the work of the industry-led Robocall Strike Force assembled by former Chairman Wheeler last summer. The Strike Force last met in October, 2016 and is expected to meet again in April of this year. We strongly support the Commission's efforts to combat robocalls, and that includes industry efforts as part of the Strike Force.
6. **Lifeline.**⁸ We expressed our disappointment with the February 3, 2017 revocation of the Lifeline Broadband Provider designation for nine companies and briefly discussed that

for Reconsideration, CG Docket No. 02-278 (filed Aug. 29, 2016) are available at <https://ecfsapi.fcc.gov/file/10829228610098/Final%20Broadnet%20Comments%20in%20Support%20of%20Petition%20.pdf>. NCLC's Reply Comments in furtherance of the Petition for Reconsideration, CG Docket No. 02-278 (filed Sept. 15, 2016) are available at <https://ecfsapi.fcc.gov/file/1091586742275/NCLC%20Broadnet%20Reply%20Comments%20Sept15.pdf>.

⁴ In the Matter of Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991, Blackboard, Inc. Petition for Expedited Declaratory Ruling, Edison Electric Institute and American Gas Association Petition for Expedited Declaratory Ruling, CG Docket No. 02-278, Declaratory Ruling, at 11 ¶ 23 (Rel. Aug. 4, 2016), *available at* <https://ecfsapi.fcc.gov/file/0804720522141/FCC-16-88A1.pdf>.

⁵ NCLC's Notice of Ex Parte Presentation regarding the Anthem petition (Oct. 18, 2016) is available at <https://ecfsapi.fcc.gov/file/10182505922181/Anthem%20Ex%20ParteOctober%2018.pdf>, and Consumers Union's Ex Parte Presentation regarding the Anthem petition (Oct. 25, 2016) is available at <https://ecfsapi.fcc.gov/file/10252222308024/TCPA%20--%20CU%20ex%20parte%20letter%20to%20FCC%20on%20Anthem-WellCare%20petition%20--%2010-25-16%20--%20FINAL.pdf>.

⁶ This topic was discussed only at the meeting with CBG staff.

⁷ This topic was discussed only at the meeting with Chairman Pai's staff.

⁸ This topic was only discussed at the meeting with Chairman Pai's staff.

Order. We also noted our agreement with the Chairman's statement in, *Setting the Record Straight on the Digital Divide* (February 7, 2017): "It's vital that low-income Americans have access to communications services, including broadband Internet, which Lifeline helps to achieve."

In support of all of these points, we provided the attached excerpt from an ongoing case against the student loan servicer, Navient, highlighting the need for the Commission to strictly limit autodialed calls. These excerpts document that Navient called this debtor—who was making payments on his student loans—over 700 times, over 525 of which were made after the debtor clearly stated that he wanted the calls to stop.

Additionally, we provided the illustration of the growth in the complaints made annually about robocalls to the Federal Trade Commission and the Federal Communications Commission (from a bit less than 2 million in 2014 to over 3.8 million in 2016). While the number of lawsuits relating to the TCPA has also grown during the same period, the total number of lawsuits still equals less than 1% of the total number of complaints.

If there are any questions, please contact Margot Saunders at the National Consumer Law Center (NCLC), msaunders@nclc.org (202 452 6252, extension 104).

This disclosure is made pursuant to 47 C.F.R. § 1.1206.

Thank you very much.

Sincerely,

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Attachments: 4 pages